

Sir, as you know, this company should have come under the purview of the Prize Chits and Money Circulating Scheme (Banning) Act, 1978. But it chose to go to the Court and got an injunction of the Court which has finally given its verdict on March 14, 1986 stating that this company does come under the purview of the Act. But the Company has now gone in for appeal. Meanwhile, the affairs of the company are being mismanaged and the interest of 2.5 crore certificate holders, most of them middle-class and lower middle-class people and wage earners, is involved in this. There are four lakh field workers and 4000 employees. The total assets are as much as 660 crores of rupees. It is public money. Therefore, it is a very serious matter.

Demands have been made that this Company should be nationalised as quickly as possible and made a part of the Life Insurance Corporation of India. Sir, I am very much perturbed about a letter written by this company to the Finance Minister. According to a press report which appeared yesterday, "the Peerless General Insurance and Investment Company has informed the Union Finance Minister, Mr. V. P. Singh, that according to the opinion of the Union Law Minister, Mr. Asoke Sen, not even Parliament has any right to prohibit the genuine business of the company as that will suppress its rights guaranteed under the Constitution." Sir, we have seen much bigger companies being nationalised. The Maharajas have gone. This Company is challenging the right of the Parliament to interfere in its affairs. It has the temerity to quote the Union Law Minister's opinion as its lawyer, most probably in 1980 or so. Today, Sir, this Company is quoting his opinion to buttress its claim. This is a very serious matter and it is a challenge to Parliament. Therefore, I would ask the Government not only to come forward with a statement, but also to take immediate steps to nationalise this Company in public interest. Thank you, Sir.

**SHRI LAJ. K. ADVANI** (Madhya Pradesh): Sir, I join Mr. Upendra in expressing concern for these field workers, the field staff and other employees. I happened to see a statement by the Law Minister in which he is reported to have favour-

ed its merger with the LIC. So, having heard Shri Upendra and seen this particular report, I think it would be in the fitness of things if the Union Law Minister who is present here now clarifies the position and say what exactly is the thinking of the Government on this. Thank you, Sir.

**MR. DEPUTY CHAIRMAN:** No. no. Not now.

**SHRI V. GOPALSAMY** (Tamil Nadu): He is silent. Silence means what?

**MR. DEPUTY CHAIRMAN:** Now, we go to the next item, that is, the Supreme Court (Number of Judges) Amendment Bill, 1985. Yes, Mr. Madan Bhatia

### THE SUPREME COURT (NUMBER OF JUDGES) AMENDMENT BILL, 1985— CONTD.

**SHRI MADAN BHATIA** (Nominated): Sir, I have no intention to dwell upon the subject of judicial reforms concerning the jurisdiction of the Supreme Court or the ways and means which may be adopted for reducing the arrears. The subject by itself is so vast that it is impossible to deal with it in a matter of a few minutes. In a speech of a few minutes on this Bill, which is confined only to increasing the number of the Judges of the Supreme Court. The sole reason for my standing up and speaking today is the unfortunate statement which was made by one honourable Member on the other side the day before yesterday by making a reference to a recent decision of the Supreme Court to suggest that the Supreme Court is prone to intervening on behalf of the big people and big concerns. I would respectfully submit, Sir, that that was a very unfortunate allegation against the Supreme Court. It was an unfortunate statement. The Supreme Court is not here to defend itself. More than two years ago, Mr. Justice Bhagwati delivered a lecture in Bombay on the development of law in this country and he said that the exhilarating process of the development of law in this country started with Mrs. Maneka Gandhi's case. If this process of the development of law has been accelerated in this country in the last few years, I would respectfully submit, Sir, it

[Shri Madan Bhatia]

is because of the intervention of the Supreme Court on behalf of the rights of the poor people. While I am making this statement, I can do no better than make a reference to some of the judgments of the Supreme Court. One of the cases which came up before the Supreme Court concerned the poor Harijans who were living in a remote village in the district of Shimla as far as back as 1972. The State of Himachal Pradesh had given funds for the construction of a link road to give access to those poor people to the rest of the world. But, because of the tradiness on the part of the Department concerned, the road was not constructed. It is on behalf of those Harijans that the Supreme Court stood up and gave a new dimension to article 21 of the Constitution. The Supreme Court held that it is the right of the poor people, particularly the hill people, to have an access to the rest of their own country because this right is a part of their right to life and personal liberty. It is also a part of their Fundamental Right to have free movement throughout their own country and this is what the Supreme Court said in that case and I would like to quote it. The Supreme Court has said:

I quote:

"Every person is entitled to life as en-joined in Article 21 of the Constitution, and in the facts of this case read in conjunction with article 19(1)(d) of the Constitution and in the background of Article 38(2) of the Constitution every person has right under Article 19(1)(d) to move freely throughout the territory of India and he has also the right under Article 21 of his life and that right under Article 21 embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself...."

Can it be said that the Supreme Court was intervening on behalf of the rich people?

I give another example. The hon. Members know the famous case of the pavement dwellers of Bombay. In that case the Supreme Court held that so far as

pavement dwellers are concerned, they have no right under the Constitution to occupy the portions of pavements on the streets. But the Supreme Court also went a step further. The Supreme Court held that so far as those pavement dwellers are concerned, who had been censused in 1976 and who had been issued the cards and had been given the assurances that those who had been occupying the pavements in 1976 would not be evicted these people shall not be evicted by the Government of Maharashtra without providing them alternative accommodation. This is the direction which the Supreme Court gave on behalf of the pavement dwellers of the city of Bombay. On what basis was this direction given? Once again the Supreme Court gave a new dimension to Article 21 of the Constitution. The Supreme Court held that the right to livelihood is a part of the right to life as enshrined in Article 21 of the Constitution. If you take away the right to livelihood from the poor people of this country, you are in fact denying them the fundamental right to their own life. And I again quote these particular lines. The Supreme Court said:

"The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live...."

This principle, Sir, was once again invoked by the Supreme Court on behalf of the poor unemployed engineers of the State of Bihar. The State of Bihar formu-

lated a scheme to provide employment to the unemployed engineers of the State by giving them loans to establish agro-centres. The loans were advanced by the banks. But, unfortunately, those loans were not supported by the subsidies which had been promised to them. The loans were not supported with the sanctions which were required to be given by the State Government departments on time. The loans were also advanced to these unemployed people in a very tardy fashion. The result was that the whole scheme flopped. These poor engineers were burdened with heavy debts from the banks from which they had taken loans. And they came to the Supreme Court. They came to the Supreme Court with the complaint that this was a scheme on the basis of which they had taken the loans. If these schemes fell through, it is not through our fault, but we have been burdened on the other hand, instead of getting any employment, with heavy debts from the banks and the banks are now on our necks to get back the loans. The Supreme Court intervened on their behalf and this is what the Supreme Court said:

"We believe it would be tragic not only for the agro-engineers and technocrats in distress today but also for a scheme of great promise put into effect with much hope, if despair was allowed to defeat it. Accordingly, while we keep these cases pending, we request the Government in the Ministry of Agriculture to reformulate the scheme after consultation with all the parties concerned, including an appropriate opportunity to the petitioners and other agro-engineers and technical personnel covered by the original scheme, to represent their case before it. The scheme will take into account two broad divisions, one for revival of the Agro Service Centres where that can be reasonably envisaged, and the other providing for equitable reduction in appropriate cases of the financial obligations of the entrepreneurs concerned to the extent reasonably possible."

These, I respectfully submit, are the dimensions which have been given to the fundamental rights of the citizens enshrined in the Constitution of India, and these dimensions have been given

on the intervention of the Supreme Court on behalf of the poor people of this country. I give just one more example. This Supreme Court has also held that right to speedy justice is again a part of fundamental rights under Article 21 of the Constitution. We all know that hundreds, if not thousands, of prisoners were languishing in various jails without trial for years. It is those people who approached the Supreme Court. It is these dimensions given to the fundamental rights of the people by the Supreme Court which led the Supreme Court to intervene on their behalf, and the Supreme Court said,—

"It is not possible for the Supreme Court now to redress the wrong which has been done to these poor people. Their green Years of life have been wasted in jails. They cannot be returned to them."

But the Supreme Court directed payment of compensation to those poor undertrials. The State had to pay the compensation. These are the dimensions which have been given to the fundamental rights of the citizens.

And lastly, it has been said that there has been a spurt in litigation in this country. I would only refer to some observations made by the honourable Mr.

Justice Bhagwati in a very well-known case—the Airports Authority case—in which His Lordship has held that because of the tremendous increase in the social, economic and welfare activities of the modern State in this country and their impact on the rights of the citizens in this country, it is but legitimate that the citizens should be treated equally and not arbitrarily. This was a development of Administrative Law. And if a citizen, because of the impact of any action of the State on account of economic, social or welfare activities of the State, becomes a victim of arbitrary action on the part of the State, the Supreme Court shall intervene, and the Supreme Court has been intervening since then. Thank you.

I support the Bill.

**SHRI SANKAR PRASAD MITRA** (West Bengal): Mr. Deputy Chairman, Mr. Bhatia has been replying to a point raised by an honourable Member who is not present in the House at the moment. I do not dispute Mr. Bhatia's proposition. But there are umpteen cases on the other side of the line also.

**SHRI B. SATYANARAYAN REDDY** (Andhra Pradesh): Mr. Deputy Chairman, Sir, I rise to support and welcome the present Amendment Bill to increase the number of Judges in the Supreme Court. The Supreme Court is the highest court of the land. And we look to the Supreme Court for the protection and the interpretation of the Constitution. We also look to the Supreme Court for the protection of the Fundamental Rights of the people against the arbitrary acts and actions of the Executive. We also go to the Supreme Court for safeguarding the liberty of the people. So, it is essential that not only the strength but also the quality of the Supreme Court should be improved.

1.00 P.M.

Sir, while welcoming this provision, I would like to make certain observations and suggestions for the speedy disposal of the cases in the Supreme Court. It is a well-known dictum that justice delayed is justice denied. A large number of cases are still pending not only in the Supreme Court but also in various High Courts. As is seen from the Statement of Objects and Reasons, about 49,000 cases are instituted yearly and more than 70,000 cases are pending in the Supreme Court. As such it is felt necessary by the Supreme Court itself that the strength of the Judges should be increased. I would like to draw the attention of the hon. Law Minister to one point. I welcome this increasing the strength of the Supreme Court. But the point is whether by merely increasing the number of Judges can we dispose of the enormous increase in the number of cases in the Supreme Court and the various High Courts? Sir, while taking into consideration this aspect, we have to take into consideration the other aspects of how to dispose of these cases.

The number of the Judges has been raised from 7 to 10, from 10 to 14, from 14 to 17, and now from 17 to 25. According to a report, the pendency in the Supreme Court in 1981 was 48,653 cases whereas in 1984, the pendency has gone up to 86,730 cases. At the end of 1985, the number of fresh filings has reached a figure of 87,000, and the pendency has increased to about 1,20,000. As a result, the Supreme Court necessarily felt that the strength of the Judges should be increased. The arrears are accumulating yearly though the number of Judges has increased. The disposal is not keeping with the increase in the numbers. So, I suggest that not only the number should be increased but also the quality should be maintained. Apart from increasing the strength, some other measures have also to be taken for the speedy disposal of the cases. I would suggest that the co-operation from the Bar, co-operation from the staff of the Supreme Court and the various High Courts should be sought for speedy disposal of the cases because until and unless you seek the co-operation of the Bar and the co-operation of the staff and the other members of the courts, we are not expected to have a speedy disposal of cases. So, this is very important and this must be taken into consideration by the Law Minister. Another important aspect is the service conditions of the Judges and also the staff. This has to be taken into consideration. Then I would like to deal briefly with article 39(A) of the Constitution which says that the legal system should promote justice on the basis of equal opportunities. Sir,

it is our duty to provide cheap, expeditious and free justice to all and ensure that opportunities for speedy justice be not denied to any citizen by reason of economic or other disability. Sir, in this connection, I would like to tell you how cases are pending from 30 and 40 and even 50 years in the Supreme Court. It has been said that a suit was filed in 1949 and it was disposed of in the Supreme Court in 1982. When the suit was filed the person was unmarried and when the suit was disposed of the person was married and had, half a

dozen children and the result was that he could not provide proper education to his children. Such is the justice we are giving to the common man in this country. So, we have to take speedy measures to dispose of these cases.

Then, Sir, I would like to come to another important issue. I would like that Honourable Law Minister should pay attention to this issue especially when he is here. I would like to bring to his notice the issue of vacancies in the Supreme Court and the High Courts. These vacancies are not filled up immediately and they are going on from year to year. Even in the matter of appointment of judges and filling up of vacancies in the Supreme Court and the High Court, established norms and procedures are not properly followed. In this connection I would like to draw the attention of the Law Minister to the fact that there were some vacancies in the High Court of Andhra Pradesh. The Chief Justice of Andhra Pradesh had recommended nine names out of 11 and this panel of nine names, included the names of Mr. Subbaiah and Mr. Subba Reddy and the Chief Minister of Andhra Pradesh and the Governor of Andhra Pradesh had approved this list and I think the Union Law Minister also had approved this list. But, unfortunately, the Chief Justice of India has deleted these two names, including the name of Mr. Subbaiah and it has been rumoured that on the intervention of or misrepresentation of a Union Minister hailing from Andhra Pradesh these two names have been removed or deleted from the list. I would like to know from the hon. Minister whether the Chief Justice of India has consulted Law Minister before dropping these two names from the list. I would also like to know from the Law Minister, as he is duty bound to explain to this House and also to the nation, whether these things have happened in this country in the Supreme Court and in the High Court. Sir, I would like to know whether it is a fact that the Union Minister has intervened and misrepresented to the Chief Justice of India in dropping these two names and whether the Union Law

Minister has been consulted before dropping these two names. Sir, this is a very serious matter. You are bound to give the explanation.

Then, Sir, before I conclude I would like to give a few suggestions so far as this issue is concerned. Firstly, the idea of keeping Judges under the executive control should be given up and the independence of judiciary should be ensured. Secondly, a number of frivolous cases are being filed. There is the need to have a law or legislation or an enactment to discourage such frivolous cases and if any such cases are filed there should be provision of punishment for them. Thirdly, Sir, the time during which a case can remain pending should be limited, i.e., there should be a time-limit. Within that time limit the cases should be disposed of. Fourthly, the appointment of judges should be made on the day the vacancy arose. We are taking a number of years in filling up a vacancy. We are not taking steps to fill up a vacancy as soon as it arise. It is necessary that a vacancy should be filled up as soon as it arises and steps in that direction should be taken in advance. Fifthly, the recommendations of the 14th report of the Law Commission, that the disposal of cases should be speedy and less expensive, should be implemented. Then, we must not only have to stress on the quantity but also as the quality of judges. We must also provide necessary amenities and facilities to judges for proper disposal of cases. Then the interest of the litigant public should be safeguarded. Lastly, due to enormous increase in the number of pending cases, it is necessary that a bench of the Supreme Court should be set up at Hyderabad, in Andhra Pradesh...

SHRI R. MOHANARAGAM (Tamil Nadu): Or at Madras.

SHRI B. SATYANARAYAN REDDY: Yes, or at Madras, so that litigants should be saved from the trouble of coming to Delhi.

SHRI BIR BHADRA PRATAP SINGH (Uttar Pradesh): Mr. Deputy Chairman, the Supreme Court started, barring the Chief Justice, with a strength of seven judges and now, according to the present

[Shri Bir Bhadra Pratap Singh]

of 11 judges, then to 13 judges, then to 17 judges and now, according to the present amendment, we seek to have 25 judges. This is a welcome measure. Therefore, I support the Bill. But many suggestions have been made about which I want to make my comments. First point that was considered was about the pendency of the cases and the mounting arrears. One of the suggestions was to create benches of the Supreme Court in different regions of the country and benches of the High Courts in different regions of a State. I think this is a very dangerous suggestion. Those who make such suggestions, I submit with all humility and respect, have not followed the history of our country correctly. After all, when the founding fathers of Indian Constitution gathered together and were trying to give a Constitution to this country they had the history of this country in their mind. Perhaps, we have a tendency to disintegrate. We have before us a situation where regionalism always poses a problem leading to disintegration and they wanted to prevent this situation. That is why, they contemplated a strong Centre. Therefore, on the basis of checks and balances, they created three wings, judiciary, executive and legislature. When they contemplated about judiciary, they very well laid down that there shall be a Supreme Court. When they contemplated about States, they laid down that there shall be a High Court in each State. Now, after all these years, linguistic problems and such questions have arisen to show as if the whole country will be torn to pieces and they want to divide and disintegrate the country. But under the able stewardship of Pandit Jawaharlal Nehru, they foresaw such a situation and tried to arrest such tendencies. Again, that problem is raising its head and somebody whispers on the basis of their own arguments and they want to reduce the Supreme Court. But do you think that by reducing it or by dividing the Supreme Court into benches and reducing it to State level, will you be able to decrease the arrears? You create more benches and I can assure you there will be more litigation. You create

more High Courts and I can assure you there will be more litigation.

श्री बीरब्रह्म वर्मा (उत्तर प्रदेश) : सारे देश में एक ही रहने दो ।

SHRI BIR BHADRA PRATAP SINGH: Since my learned friend has raised this question, I will take up this question first. Where should the Bench be located? Should it be Meerut or Muzaffarnagar, Moradabad, Agra, Jhansi, Badaun, Ruhelkhand, Gorakhpur? Do you want that our High Courts should be reduced to dignified District Courts? This seems to be your suggestion. By this, you will only be laying the foundation for the bifurcation of U.P., by encouraging such regional feelings which will not serve the cause of justice or the cause of India's history. This is what our founding fathers of the Constitution wanted to prevent.

SHRI M. A. BABY (Kerala): Nobody is demanding more than one Supreme Court. We are only demanding Benches.

SHRI BIR BHADRA PRATAP SINGH: I am referring to the dangerous suggestion which has been made. Please do not try to reduce our Supreme Court into dignified High Courts. It may be Kerala, it may be Karnataka, it may be Tamil Nadu, it may be Maharashtra, it may be Andhra Pradesh, it may be West Bengal, it may be Bihar. What is the principle?

SHRI NIRMAL CHATTERJEE (West Bengal): Are you referring to the quality of the Supreme Court, or, are you referring to the question as to where it should be located?

SHRI BIR BHADRA PRATAP SINGH: I am referring to the demand being made that there should be regional Benches of the Supreme Court.

SHRI NIRMAL CHATTERJEE: Just a minute. If the Supreme Court were not located in Delhi and it is located, say, in your place, would the quality be affected? If this will not affect the quality, then, how the Benches located at that level of Supreme Court would affect the quality of justice?

**SHRI VIRENDRA VERMA:** If the Supreme Court is located at Adalabad, he has no objection.

**SHRI BIR BHADRA PRATAP SINGH:** It requires three answers.  
(Interruptions)

**MR. DEPUTY CHAIRMAN:** Please do not interrupt the Member. Let him conclude.

**SHRI BIR BHADRA PRATAP SINGH:** I think, Mr. Nirmal Chatterjee is supporting one of our Members who put forward the argument yesterday.

**MR. DEPUTY CHAIRMAN:** Your time is getting reduced.

**SHRI BIR BHADRA PRATAP SINGH:** I will raise only two questions. I will not raise the third question although I have so many questions to raise. The President of the Supreme Court Bar Association is now presiding over the liquidation of the Supreme Court of India by making the suggestion yesterday in the House, when he said that for appellate jurisdiction purposes, let there be Benches of the Supreme Court. Of course, I quite realise the sentiments of the regional forces. But I am appealing to them. (Interruptions) Please resist this temptation. When I elaborate on my second question, you will be fully convinced why I say this. I do not want to mix the two issues. My second question relates to the suggestion made by Mr. Bhandare yesterday. The President of the Supreme Court Bar Association himself, as I said, is suggesting that there should be Benches of the Supreme Court for appellate jurisdiction purposes. When he says this, he is going contrary to what Pandit Jawaharlal Nehru said, what Gobind Ballabh Pant said in this House and what the Fourth Law Commission under the leadership of the doyen of the Bar, Shri Setalvad,—which also comprised of prominent and emi-

nent jurists—said. He is reversing the whole process. The concept of taking justice to the door-steps of the poor litigants is the only argument which has been advanced because poor people cannot go to these courts because of the distance, because it involves a lot of expenditure. It is said that because of the distance, people are not able to get justice. Now, what is this concept of taking justice to the door-steps of the poor people? The hon. Minister of State for Law is here. I am advancing an argument. Please listen to me. Please listen to my arguments only. When we say, taking justice to the door-steps of the poor people, we have two concepts only. One is, people's courts. Secondly, legal aid to the poor. But apart from that, there are five stages in the hierarchy of judicial history, namely, Munsif Court, Civil Judge Court, District Judge Court, High Court and Supreme Court. Do you want all the five stages must be brought to the doors of poor litigants?

**SHRIMATI RENUKA CHOWDHURY (Andhra Pradesh):** Yes, it is the fundamental right of every democratic Indian.

**SHRI BIR BHADRA PRATAP SINGH:** That is not the argument.

**SHRI NIRMAL CHATTERJEE:** Does it mean that '2' is the magic number and no more than two stages may be taken in this regard?

**SHRI BIR BHADRA PRATAP SINGH:** Kindly try to appreciate what I am saying (Interruptions). I wanted to quote Mr. Setalwad who was annoyed for some reason. I do not know the spirit of his annoyance but he was annoyed. (Interruptions) I do not believe in criticising either the Supreme Court or the Supreme Court judgements. I have never approved of that even though some of our Ministers have criticised Supreme Court judgements for some reasons. Mr. Setalwad had put up a different argument. He was lamenting that Supreme Court, there was a controversy

[Shri Bir Bhadra Pratap Singh] standards of Privy Council and we were creating judges who could be called corridor judges. He was a great man, he has the right to say anything. He was the Attorney-General and he was the chairman of the Law Commission, but the feeling was that the role and purpose of the Supreme Court was to decide on limited scope of jurisdiction. The disputes between single individual and the Centre, the dispute between the State and the State and certain fundamental rights, the rights of *habeas corpus* and so and so forth, came within its jurisdiction. But you cannot extend the scope of the Supreme Court as it was done because of the present article 136 and what the previous two speakers have said, or what Mr. Mitra, our ex-Judge of Supreme Court has suggested. It is a very delicate matter. I do not express my opinion on that but we have to define the scope of article 136. Otherwise, you cannot take each and every dispute to the Supreme Court and expect that only with 25 number you will be able to solve the problem. The malady is somewhere else than having benches or taking every case to the Supreme Court. (Interruptions). I do not agree even with Mr. Madan Bhatia on what he expressed today. Sometimes Supreme Court has expressed views on property rights which has resulted in amending the Constitution on many occasions. Take the case of Shri A. K. Gopalan. It has gone far beyond the scope. (Interruptions). I am concluding. So, I do not know by creating regional benches, by disintegrating Supreme Court and making it a dignified High Court how you will be able to make poor people reach. So, logically, economically and from all other angles you are doing a great harm by making such proposals in the name of poor people. I agree with Mr. Madan Bhatia to the extent that in many cases the Supreme Court has given pro-poor decisions. They have tried to implement part Fourth of the Constitution. Shri Nirmal Chatterjee is conscious of the Part Third. (Interruptions).

MR. DEPUTY CHAIRMAN: That is all right. Please sit down. (Interruptions). Shri Virendra Verma.

SHRI BIR BHADRA PRATAP SINGH: With these words I support the Bill.

श्री बीरेन्द्र वर्मा: डिप्टी चैयरमैन साहब, लोक सभा की इस्टिमेट कमिटी के अनुसार सुप्रीम कोर्ट में इस समय 1 लाख 66 हजार 319 केसों पेडिंग हैं। हाई कोर्ट और सुप्रीम कोर्ट में सभी जगह 17 लाख से अधिक केसों आज हिन्दुस्तान में पेडिंग हैं। तीन साल से ऊपर के केसों हाई कोर्ट में 5 लाख से अधिक केसों पेडिंग हैं। दस साल से ऊपर के 30 हजार केसों हाई कोर्ट में पेडिंग हैं। सुप्रीम कोर्ट में दस साल से अधिक के केसों 203 हैं। जो कंस्टिट्यूशनल केसों सुप्रीम कोर्ट में हैं वे भी 14 सालों से पेडिंग हैं। मान्यवर, नई संसद बिल्डिंग का यह बिल लाया गया है कि कल सुप्रीम कोर्ट में तीन जजों के स्थान अभी भी रिक्त हैं।

विधि और न्याय मंत्रालय में राज्य मंत्री (श्री हंसराज भारद्वाज) : दो स्थान रिक्त हैं।

श्री बीरेन्द्र वर्मा : दो होंगे, मैं स्वीकार कर लूंगा। आपने कहा कि दो हैं तो मैं इसको स्वीकार कर लेता हूँ। लेकिन डिफरेंट हाई कोर्ट में 67 स्थान अभी भी रिक्त हैं। अंध प्रदेश में साढ़े तीन साल से और दो दो साल से इस तरह के मामले पेडिंग हैं। उत्तर प्रदेश के इलाहाबाद हाई कोर्ट में डेढ़ साल से किलने ही स्थान रिक्त हैं। इलाहाबाद हाई कोर्ट में जो 13 स्थान रिक्त हैं वे डेढ़ और एक साल से अधिक के हैं। मान्यवर, मैं आज तक यह नहीं समझ सका कि इतने लम्बे समय तक केसों पेडिंग होते चले जायें, नई बैचमी बढ़ती चली जाय और केसों का निस्तारण न होता हो तो मान्यवर, आज आप अगर मुझे दो तो मैं इसको माननीय मंत्री महोदय की गैलीजेंसी समझे, वे बहुत योग्य हैं, मैं उनको इन-एफिसियेट तो कह नहीं सकता, उनका डिस्टिन्क्शन समझूँ इस काम में। मान्यवर, संविधान की 39 (ए) की जो धारा है उसमें कहा गया है कि शीघ्र, सस्ता



और सुलभ न्याय जनता को दिया जायगा । यह क्यों सा तरीका है ? क्या इससे सस्ता और सुलभ न्याय मिल रहा है । चौदहवें ला कमीशन ने भी यह कहा था कि डिस्पोजल बहुत शीघ्र होंगे चाहिए, न्याय जनता को मिलना चाहिए लेकिन वह नहीं हो रहा है । न वह हो रहा है जो भारत के संविधान के अनुसार होना चाहिए और न उसका पालन हो रहा है जो लां कमीशन ने अपनी रिपोर्ट में कहा है । जो इस मंत्रालय की लोकसभा की कन्सलटेटिव कमटी है, परामर्शदात्री समिति है उसने भी ला मनिस्टर से यह कहा है कि क्रिमिनल केसेज एक साल में तय होने चाहिए और सिविल केसेज अधिक से अधिक दो साल में तय होने चाहिए । लेकिन मान्यवर, मैं आपको बताया कि दस साल से अधिक के 30 हजार केसेस हिन्दुस्तान में पैडिंग हैं और तीन साल से ऊपर के 5 लाख केसेज पैडिंग हैं । मान्यवर, यह एक साल और दो साल का निर्णय आपने खुद लिया था । इसलिये मान्यवर, मैं यह निवेदन करना चाहता हूँ कि जिस तरह से सेनाध्यक्षों की नियुक्ति की जाती है, जिस समय वह रिटायर होते हैं, उससे दो-चार महीने पहले नई नियुक्ति की जाती है तो उसी तरह से जजों की नियुक्ति होनी चाहिए । जब इस चीज की जानकारी है कि हाई कोर्ट और सुप्रीम कोर्ट का जज फलान तारीख को रिटायर होने वाला है, तो उसके तीन महीने पश्चात् इस मामले को तय करें । लेकिन जब प्रदेशों के हाई कोर्ट अपनी रेकमंडेशंस भेजते हैं तो वह यहाँ पड़ा रहता है बहुत लम्बे समय तक, तो वह क्यों पड़ा रहता है, जैसा कि अभी अंध्रप्रदेश के बारे में बताया तो मान्यवर, यह इस देश का दुर्भाग्य है, डेमोक्रेसी और प्रजातंत्र का दुर्भाग्य है । मैं निवेदन करना चाहता हूँ मंत्री महोदय से कि देश के प्रजातंत्र के खातिर, न्याय के खातिर और ईश्वर के खातिर यह कोशिश करें जिससे जूडीशियरी कमिटिड न हो और जहाँ तक मुमकिन हो आप क्या करते हैं कि वही के आदमी को उस प्रदेश में न्यायाधीश बना देते हैं और वहीं उनके लड़के वकालत करते हैं, बकील होते हैं, वहाँ के मुकदमे होते हैं वहाँ उनकी एसोसियेट्स और रिलेशनशिप होती है इसलिये

ऐसा न हो इसके लिये दूसरे प्रदेशों के व्यक्तियों को वहाँ न्यायाधीश बनाया जाय । मान्यवर, एक निवेदन करना चाहता हूँ कि स्टे के मामले में खासतौर से मुझे शिकायत है कि जां बड़ा आदमी, अमीर आदमी, उद्योगपति होता है वह स्टे बाडर प्राप्त कर लेता है । वह हाई कोर्ट और सुप्रीम कोर्ट से स्टे ले लेते हैं । मुझे मालूम है सन् 1985 में मोदी शुगर फेक्टरी, जिला गाजियाबाद की बारे में और मान्यवर, खताली जिला मुजफरनगर का जहाँ से मैं आता हूँ नयी शुगर फेक्टरी के इस्टीमेशन पर कुछ कन्सेशन दिया था वह पुरानी शुगर फेक्टरीज थी उन्होंने एक्सटेंशन किया और नयी शुगर फेक्टरीज न होने पर भारत सरकार ने रोक दिया तो हाई कोर्ट से स्टे ले लिया और 5-5 साल से स्टे लिये हुए हैं और पूरा पूरा फायदा उठा रहे हैं । न आपकी तरफ से कोशिश है उनका कोई डिस्पोजल हो न किसी तरफ से । सुप्रीम कोर्ट ने 1956-57, 1978-79 में शुगर फेक्टरीज वालों को उत्पादकों को गन्ने की कीमतों के मामले में स्टे दिया था लेकिन आज तक उनका डिस्पोजल नहीं हुआ है । ये ऐसी बातें हैं कि लोग स्टे ले लेते हैं धनपति स्टे ले लेते हैं और गरीब आदमी न्याय से वंचित हो जाता है । यह कोशिश होनी चाहिए कि एक तरफा स्टे बिल्कुल नहीं दिया जाना चाहिए और दोनों पार्टियों को सुन कर के स्टे देना चाहिए वह भी टेम्परेरी होना चाहिए और तीन महीने के अन्दर फाइनल डिजीजन हो जाना चाहिए और कोई स्टे पांच-पांच, दस-दस और बीस-बीस साल तक न पड़ा रहे । इससे न्याय नहीं मिलता है और खास तौर से गरीब आदमी उससे वंचित हो जाता है । लोगवाग फरजी हल्फिया बयान दे देते हैं लोकन आप उन पर कोई मुकदमा नहीं चलाते हैं और वह खारिज हो जाता है लेकिन उनका अपना उल्लू सीधा हो जाता है । यहाँ मैं आप से यह उम्मीद करता हूँ कि आप इस तरफ अवश्य ध्यान दें । शुगर फेक्टरीज के मुकदमे चल रहे हैं अलग अलग शुगर फेक्टरीज के मालिक सुप्रीम कोर्ट के बड़े से बड़े टाप के लायर्ज इनगेज करते हैं । 10-15 जितने भी बड़े टाप के वकील हैं इन्होंने बड़े बड़े वकील को इनगेज कर लिया है । कने शोवर्ज और

कौन कोअप्रॉटिव सोसाइटीज भी सुप्रीम कोर्ट में पहुँच है, देवबन्द जिला सहारनपुर का पैरवी करने के लिए कोई अच्छा वकील भी नहीं मिला है और जो 15 टाप के बड़े लायर्ज हैं जो पहले अटार्नी जनरल या सोलि-सिटर जनरल रहे हैं वह प्रैक्टिस करने लगे हैं और हर आदमी एक-एक, दो-दो दिन ले जाता है, इससे दौरी भी होती है। स्टे के कारण दौरी होती है इससे गरीब आदमी को न्याय नहीं मिलता है। क्या यह सम्भव नहीं है कि अगर एक प्रकार के कौंसज हों सब मिल मालिकों को सुप्रीम कोर्ट यह कहे कि आप सबके लिए दो वकील रख लें बीस वकील नहीं रख सकते हैं। सारे अच्छे वकील पैसे वाले लोग इनगेंज कर लेते हैं तो गरीब आदमी को कैसे न्याय मिलेगा ? जो दौरी होती है वह किस कारण से होती है। भारद्वाज साहब जानते होंगे। इलाहाबाद हाई कोर्ट की मुझे जानकारी है। हमारे यहां से एक हजार किलोमीटर की दूरी पर इलाहाबाद हाई कोर्ट है। अभी एक माननीय सदस्य कह रहे थे कि जितनी ज्यादा हाई कोर्ट बढ़ेंगी जितनी ज्यादा बेंचेंगे बढ़ेंगी उतने ही ज्यादा कौंसज होंगे। उनके आर्गुमेंट का मतलब यह हुआ कि जितने हाई कोर्ट कम होंगे जितने बेंचेंगे कम होंगे उतने ही कौंसज कम होंगे। इसको ऊपर खर्च करने की जरूरत क्या है। राष्ट्रपति कहते हैं कि जनता को सस्ता, सुलभ और शीघ्र न्याय मिलना चाहिये। एक तरफ तो सस्ता और सुलभ और डोर स्टेप पर न्याय मिलना चाहिए। तो न तो डोर स्टेप पर न्याय मिलेगा जब आप एक हजार किलोमीटर पर न्याय लेने के लिए जाते हैं और न सस्ता और सुलभ न्याय मिलेगा। जब पांच पांच लाख कौंसज तीन साल में ऊपर के पड़े हैं और जब स्टे लेकर कौंसज पड़े रहते हैं तो इससे गरीब आदमी को कैसे न्याय मिलेगा। कहते हैं कि जस्टिस डिलेड इज जस्टिस डिनाइड। इससे गरीब आदमी न्याय प्राप्त करने से वंचित हो जाता है क्योंकि न्याय प्राप्त करने में बहुत विलम्ब हो जाता है। आप भी मुझ से सहमत होंगे और माननीय मंत्री जी भी सहमत होंगे कि जितनी क्रिमिनल कौंसज में डिले होती है उतने ही क्राइम बढ़ते चले जाते हैं और लम्बे समय तक संगीन किस्म के क्राइम करने वालों की जमानत नहीं होती जब उनकी

बहुत देर के बाद जमानत हो जाती है तो जमानत होते ही, छूटते ही वे क्या करते हैं। वे जो उस केस में गवाह होते हैं उनका कत्ल कर देते हैं और फिर जेल में आ जाते हैं। फिर इस तरह से क्राइम बढ़ जाते हैं। इसलिए डिले नहीं होनी चाहिए और जल्दी से जल्दी आपका निर्णय होना चाहिए और केस को खत्म करना चाहिए। मान्यवर, हाई कोर्ट के जजों का आदर करते हुए, सुप्रीम कोर्ट के जजों का आदर करते हुए मैंने देखा कि 365 दिन में वह कितने दिन बैठते हैं, सुप्रीम कोर्ट के जजों कितने दिन कार्यवाही करते हैं।

पता चला 365 दिन में से 182 दिन सुप्रीम कोर्ट के जजों कार्य करते हैं, 183 दिन छुट्टी। दस बजे से काम होता है और पाँच बजे, चार बजे उनकी छुट्टी होती है।

तो मेरा सुझाव है कि दस बजे से एक बजे तक और दो बजे से पाँच बजे तक जजों बैठें और कम से कम इस गरीब देश के लिए उन्हें इतनी क्वार्न्टी करनी चाहिए, जिस तरह कि आपके यह दोनों संसद के सदन रात में आठ-नौ बजे तक भी बैठते हैं। इसलिए इस गरीब देश के लिए कौंसज निस्तारण के लिए वह भी कोशिश करें कि उनके वकिंग डेज 250 दिन से कम नहीं होंगे चाहिए। यह कोई मालदार देश नहीं है।

श्री उपसभापति : आपने बहुत समय ले लिया।

श्री वीरेंद्र वर्मा : मैं खत्म कर रहा हूँ।

मान्यवर, एक बात और, जहाँ तक ट्रिब्यूनल्स द्वारा शीघ्र तय करने के लिए—सुप्रीम कोर्ट ने भी कहा, पुराने चीफ जस्टिस ने भी कहा कि वह जल्दी से जल्दी होना चाहिए। तो मख्तलिफ किस्म के ट्रिब्यूनल्स की नियुक्ति करें और इस बात का ध्यान में रखें कि मामलात जितने भी हैं, जल्दी उनका निस्तारण हो। (समय की घंटी)

मैं एक बात कह कर समाप्त करता हूँ। पहले हम जानते थे कि हाई कोर्ट के, सुप्रीम कोर्ट के जजों अपने घर पर काम करके आते थे, कौंसज को तैयार करके आते

ब और आज ब्लैक, जैसी मेरी जानकारी है, ब्लैक बैठ जाते हैं, लम्बी-लम्बी बहस चलती है ।

मुनासिब यह है कि हमारे जजों तैयार होकर घर से आएँ, क्वेश्चंस खुद भी करें इरनेबैट क्वेश्चंस न होने दें, जिससे कि जल्दी से जल्दी देश में केंसेज का निस्तारण हो और जल्दी केंसेज पर डिजीजन हो ।

इन बातों के साथ मैं अपने सुझाव देकर बैठता हूँ ।

MR. DEPUTY CHAIRMAN: The House stands adjourned for lunch to resume at 2-30.

The House then adjourned for lunch at third-two minutes past one of the clock.

The House reassembled after lunch at thirty-three minutes past two of the clock, Mr. Deputy Chairman in the Chair.

SHRI THINDIVANAM K. RAMA-MURTHY (Nominated): Mr. Deputy Chairman, Sir, I am thankful to you for giving me this opportunity to make some comments on the Bill before the House. It is a welcome measure that the Government seeks to increase the number of Supreme Court Judges. The purpose behind it is speedy disposal of the pending cases. But, while we increase the number of judges, it is all the more necessary that the existing vacancies are filled up. When we think of the Supreme Court, we also must give thought to the way in which the High Courts are functioning. In many of the States, the vacancies are a permanent feature. It is high time that the Government takes into consideration the question of filling up existing vacancies. This step is necessary in addition to the necessity for increasing the strength of the number of Judges.

As for the location of the Supreme Court and the functioning of the Supreme Court, there was a controversy about the Supreme Court benches be-

ing extended to different States and different regions. I must insist that the Supreme Court Bench should be extended to the regions and, if necessary, to the various States. A strange argument was advanced that the establishment of Supreme Court Benches in different parts of the country would generate regional feelings in contrast to the national feelings. In fact, it is the other way. Sir, there has been a demand right from the day we got our freedom for decentralising certain places and having functions of the Government at different places. Even there was a thinking by our national leaders that the Parliament should itself have one of its sessions in the South—Hyderabad or Bangalore. Ultimately that plan was given up because of the expected huge expenditure. Now, people are supplementing the national feelings and are taking of regionalism. So also Benches of the Supreme Court. By functioning in different States will help the common man in getting justice from the judicial system. As far as the functioning of the judicial system, there is a comment by Members who spoke before me. I must be thankful to Mr. Babul Reddy who commented on the Supreme Court Judges and the various judgments. Some had different views. But I appreciate the instance that he quoted in the case of the "Indian Express". It is not that the court deserves appreciation for having acted in support of the poor man or poorer sections of the society. That is the duty of the courts. But at the same time if they do not do that they subject themselves to the public criticism. Sir, that public criticism should not be made and that the Supreme Court should not be criticised because there was a judgment which was in favour of the depressed class or lower sections of the society can not be accepted. As far as the "Indian Express" case is concerned, one thing has to be borne in view. In this case the Supreme Court acted quickly and vehe-

[Shri Thindivanam K. Rama murthy]

men-ly. The Supreme Court categorically said that the action was in "haste". They have not said that the action was illegal or contrary to the law. Sir, what is the outcome of it? How does it affect the society? Now some more buildings are coming up. The owners of these buildings are hopeful that they can also get stay orders in a similar way. Moneyed people are emboldened. This is how our Supreme Court is functioning.

I can also cite two or three examples. There is a case regarding abortion or horse racing in Tamil Nadu which is pending before the Supreme Court for the past ten years. What for is it pending nobody knows. But still it is pending. People know that the Supreme Court is seized of the matter. We do not know whether they are interested in getting on with the case or not. But people have started doubting about the functioning of the Supreme Court. In this particular case so many bigger elements, bigger people and moneyed people are involved. What does it mean? How does a common man get an impression about the functioning of our judiciary? Is it not the duty of the Supreme Court to see that the common man does not doubt about its bonandies? There is another case. This is with regard to the local administration elections in Tamil Nadu. The case had been pending for more than seven years in the court. Ultimately, the Government of Tamil Nadu had to withdraw the legislation which they introduced and had to revert back to the prior Act which they passed to give a go by. They said that they had to conduct the elections under the old Act. The Government of Tamil Nadu made a statement to the effect that they are conducting the elections on the basis of the old Act because they find that the case pending before the Supreme Court will not be decided for the next few

years. This is the statement made by the Government on the floor of the Assembly. This is the way the Supreme Court is functioning. Is it not the duty of the Parliament to see to it and set right all these things when these are brought to the notice of the Parliament? There is no use jumping upon other members saying that they should not tarnish the image of the Supreme Court or doubt, the bonafides of the Supreme Court. So also, Sir, there are strictures passed by High Court and Supreme Court Judges against the Government functioning and the functioning of the elected Government Heads. I do not want to go personally into any of these things but one danger must be visualised. The Court should not try to go beyond their limits to make themselves politicised or they should not be instrumental in giving room for political developments. After all, the Courts are governed by the law and evidence before them. The court has a duty to go strictly by the law but when they pass strictures against public personalities, they must think of the outcome of it. We have seen some of the strictures which were expunged developed very many political crises in some of the States but these strictures were expunged by the Supreme Court when an appeal was made (*Interup-tion*). Judiciary cannot treat the Legislature in this way. I have said what is the outcome of such strictures. When there are positive evidence they can do it but they cannot do it in each and every case without direct evidence.

MR. DEPUTY CHAIRMAN: Please don't make the running commentary Mr. Gopalsamy. (Time bell rings).

SHRI THINDIVANAM K. RAMA-MURTHY: I am concluding, Sir. In the method of administration of justice, it is my duty to bring out one existing factor in our State wherein a new problem has come in. Recruitments

were made for the posts of magistrates and other judicial officers from among the government servants. It was not from among the Advocates, the members of the Bar. About 500 people were recruited straightaway out of the Government servants. Some of them with law degrees, some of them without law degrees and some managed to get law degrees after they were posted to the judicial positions. Now the situation has come to a stage where no member of the Bar will be a District Magistrate in Tamil Nadu after three or four years. This is the position which has come about now. Now the Government thought of sending them back from the judicial service to the Government service and recruiting members from the Bar. This has created a new controversy. Now the Government servants have started an agitation on a war-footing against the proposal of the Government, and there is war going on between the Government, the Government servants who were recruited to the judiciary and the members of the Bar. The net result is that members of the Bar will not be district magistrates after three or four years in Tamil Nadu. Is it not the duty of the High Court and the Supreme Court to see that justice is done even at the lowest stages? Is it not a question of their supervision? Should not they take action on that? How is it that the High Court allowed all these things to happen? How is it that it did not intervene in this matter? (*Time bell rings.*) I will take two minutes, Sir. This is one thing.

Then a strange thing has figured in Tamil Nadu that is, in the Tamil Nadu Assembly a judgment of the High Court was set aside by a ruling of the Speaker. I am not going into the merits of the case. That is a different thing. The Speaker quoted the Preamble of the Constitution and said that equality of justice must be ensured and the representatives of the people should...

SHRI R. MOHANARANGAM: Sir, on a point of order. I do not have any animosity towards Mr. Ramamurthy, who is a very good friend of mine. But is it right on our part to discuss about the proceedings which went on in a State Assembly, when our hon. Chairman has already said that we should not even speak about the proceedings in the State Assemblies? (*Interruptions*) I want to know whether it is right on the part of the hon. Member to discuss something about the proceedings which went on in a State Legislature? (*Interruptions*).

MR. DEPUTY CHAIRMAN: It is better not to drag it into the subject now because you are not going into the merits of the case any way. Come to your point.

SHRI THINDIVANAM K. RAMAMURTHY: I am not going into it. I am saying about the way the judiciary is functioning because a judgment is set aside one day and after 24 hours, once again that order is reversed. The judgment was first set aside, and after 24 hours, the order setting it aside was withdrawn. Just imagine the position if something critical has taken place within those 24 hours. Who would set right all those things?

MR. DEPUTY CHAIRMAN: Your time is up.

SHRI THINDIVANAM K. RAMAMURTHY: When we are discussing about justice, it is all the more necessary to see how justice is being misinterpreted or misused or mistakenly administered. This also must be taken into consideration because it has a continuing effect. Because of that incident, the district court building was not declared open in the Tirunelveli district. This is a building complex which was to be handed over to the judiciary.

SHRI V. GOPALSAMY (Tamil Nadu): My own district.

SHRI THINDIVANAM K. RAMAMURTHY: That building complex was to be declared open by the Chief Justice of the High Court of Tamil Nadu and the Speaker participating together in that function. But the Chief Justice did not attend the function. The function itself had to be cancelled. The building has not been declared open. The courts are still to be occupied. I do not think it is going to be opened in another few months or even few years because it has become a controversy between the local Government and the judiciary. My point is that this pertains to the judgment that was set aside by the Speaker. So it is a continuing affair. It is not just a question of one action or another. *(Interruptions)*.

SHRI R. MOHANARANGAM: Sir, the Member is speaking about the action of the Speaker on the floor of the Assembly, about what he said on the floor of the House.

SHRI THINDIVANAM K. RAMAMURTHY: I have not said anything about the merits of the case.

MR. DEPUTY CHAIRMAN: I have told you specifically to confine yourself to the Bill.

SHRI THINDIVANAM K. RAMAMURTHY: I have not gone into the merits of the case.

SHRI R. MOHANARANGAM: You are just entering, Mr. Ramamurthy.

SHRI THINDIVANAM K. RAMAMURTHY: I am just saying that the Chief Justice of Tamil Nadu refused to associate himself in function with the Speaker of Tamil Nadu because these things took place...

SHRI R. MOHANARANGAM: Is that the merit of the case?

SHRI THINDIVANAM K. RAMAMURTHY: Ultimately who suffers if the judiciary functions without buildings as in Tirunelveli District? It is

the public at large which is torn between the Speaker and the Chief Justice. So when we take measures to streamline and administer better justice at the top level, it is all the more necessary that we look at the lower level also and set things right. Thank you.

SHRI V. GOPALSAMY: Mr. Deputy Chairman, I extend my thanks for the opportunity given. This Bill should have been passed in Rajya Sabha even before the Winter Session last year. I do not know why it was delayed. Anyhow, I commend the Law Minister for bringing the Bill increasing the strength of the judges in the Supreme Court. Accumulation of arrears of cases has become a Himalayan problem in our country. Cases are pending for decades. When a litigation is started by someone, that litigation has to be continued by the succeeding generations. According to the Estimates Committee report the pendency of cases in the Supreme Court as on 31st December 1985 was 1,66,390. According to the reply given in the month of March this year by the Law Minister, the cases pending in the Supreme Court as on 1st February, 1986 were 1,38,190. As far as the pendency of cases in High Courts is concerned, I quote the report again—"From the available statistics the Committee finds that in almost all the High Courts there is heavy accumulation of pending cases that have piled up over the years. At least in five cases the pendency has crossed the one lakh mark. It is not only alarming but distressing. The position in Allahabad High Court particularly is a record with more than 2,42,000 cases pending as on 30th June, 1985. The Committee are distressed to note that very little has been done by the Government of India to tackle this problem which by now has assumed serious proportions. What is worse is that each year there is increase in the pendency. The pendency has increased by more than 13,000 in Allahabad nearly, 7,000 in Andhra Pradesh, 5,000 in Calcutta, 6000 in Delhi,

14,000 in Kerala and a little less than 26,000 in Madras High Court." Unless the accumulation of arrears is arrested, the situation will go completely out of control. The very rule of law of this country depends upon speedy administration of justice. As far as pendency of cases in High Courts is concerned, the delay in filling up the vacancies also is a major contributing factor for the accumulation of arrears. For example, 60 vacancies exist in the High Courts as per the statement of the Minister. What are the reasons for the delay in filling up the vacancies? Mr. Bhandare raised one point the other day. As far as Madras High Court is concerned, four years have passed and yet the vacancies have not been filled up. Who is responsible for this? In this report it is mentioned that many reminders were sent to the Chief Minister, four wireless messages were sent to him, but there is no response to them. It is reported here...

SHRI R. MOHANARANGAM: It is wrong

SHRI V. GOPALSAMY: No. That is the callous attitude of the Tamil Nadu Government which is ruled by my friend, Mr. Mohanarangam...

SHRI R. MOHANARANGAM: It was once ruled by them also.

SHRI V. GOPALSAMY: Sir, you should exclude this time from the time allotted to me.

Sir, as far as the appointment of Judges is concerned, this Government is looking forward to having committed Judges. For extraneous reasons the Judges of the Supreme Court are appointed, Supersession is not something new as far as this Government is concerned. Mr. Shelat was superseded; Mr. Hedge was superseded; and Mr. Grover was superseded. So, all these people were superseded. Their eyes are fixed on committed Judges. During the dark days of the Emergency, Sir, the role of the judiciary

was very depressing. Recently appointments have been made in the Supreme Court. I would like to know whether strictly seniority and merit were considered for these appointments. Not at all. They start thinking that if somebody is appointed as the Judge of the Supreme Court, in how many days he will become the Chief Justice of the Supreme Court, whether in one year or two years or three years, and they also think that in that case he will not be amenable. So, they try to find another Judge. On this point, Sir, even the Law Commission has, in its Report, observed that appointments were made on political grounds. So, the fittest men were not selected. That is the observation of the Law Commission in its Report.

There has been a demand to have a Bench of the Supreme Court in the South, a justifiable demand, because people have to come all along, have to come here covering thousands of miles, travelling about a thousand and five hundred miles from the South, to come to the Supreme Court and you can imagine the expenses and the time involved. Therefore, it is a justifiable demand. I request the Law Minister to give a favourable reply to this. We want a Bench of the Supreme Court in the South and I will be very glad if it is in Madras. As far as having a Bench of the Madras High Court in Madurai is concerned even the Bar of the Madras High Court is not objecting to it, but is welcoming it. Therefore, I expect that the honourable Law Minister, Mr. A. K. Sen, will give a favourable reply as far as opening a Bench of the High Court of Madras in Madurai in Tamil Nadu is concerned.

Sir, judiciary is the guardian of the people, is the custodian of the law of the land. But dangerous signals appear in some places and there are attempts to denigrate the role of the judiciary, to destroy the independence of the judiciary, and that is why. Sir, on the 7th of April, a moral blow was struck at the independence of the judiciary of this country.

[Shri V. Gopalsamy]

Never before has it happened in any democratic country in the world where a Legislature set aside the judgment of a High Court which was sustained by the Supreme Court. The other day, Mr. Babul Reddy asked a question. He asked whether it is possible for a Legislature or Parliament to pass a decree in a small cause case or in a small cause suit. Everybody understood the point. But, Sir, a judgment of the Madras High Court has been set aside. Article 211 of the Constitution is very clear. It says that no discussion shall take place in a legislature of a State with respect to the conduct of any Judge of the Supreme Court or High Court in the discharge of his duties. But, Sir, the Speaker of the Tamil Nadu Assembly gave ruling.

SHRI R. MOHANARANGAM: Sir, on a point of order, I am just asking a question specifically. So many things are going on the floor of this Parliament. Suppose the Speaker of the Tamil Nadu Assembly starts speaking on the proceedings of this Parliament and about the action taken by the Speaker or the Chairman here. What will be the reaction? You are permitting him to talk about the action of the Speaker of the Tamil Nadu Assembly, Mr. Pandiyan, with regard to certain matters.

3 p.m.

It is necessary or right on your part to discuss about this matter here on the floor of this House. Just give your ruling.

MR. DEPUTY CHAIRMAN: The member need not question the decision taken by the Speaker in a Legislature. But he can refer to the general nature of the case without touching individuals.

SHRI R. MOHANARANGAM: Also, for the information of the Members I can say that when the State was ruled by his party, one\*

SHRI V. GOPALSAMY: This was discussed on the floor of this House. This thing which has been referred to by Mr. Mohanaragam was discussed by this House on the floor of this Parliament.

Sir, a grave wrong has been done to the basic structure of the Constitution

by this ruling. It was reversed. But a wrong which was done by that ruling cannot be undone by the reversal. Sir, it is very serious.\*

MR. DEPUTY CHAIRMAN: Your time is over.

SHRI V. GOPALSAMY: I have taken only 8 or 9 minutes. I will take only two or three minutes.\*\*\*

That is why Mr. A. G. Noorani has made it clear. He says that Dr. Ambedkar on October 14, 1949, said that the Judiciary, the Executive and the Legislature, these three departments these three wings, honour each other. They do not usurp the powers, propriety and rights of other wings. But what has happened? Mr. Noorani says—I quote:

"What Dr. Ambedkar had considered almost unthinkable is now coming to pass. The wrong done on April 7 by the Tamil Nadu Speaker is not cured by the reversal of the decision the next day. It will be set right only by the resignation of the Speaker and by an emphatic acceptance of the judiciary's independence from outside interference. It is not only the ruling of April 7 but the false doctrine propounded that day which deserves a speedy burial."

Therefore, through you, Sir, I appeal to all sections of the freedom loving people who have got respect for democracy to...

SHRI R. MOHANARANGAM: You are allowing him. You have created a precedent. Don't create precedent by referring to the Speaker. Kindly do not create any precedents, Sir,

MR. DEPUTY CHAIRMAN: Please sit down.

SHRI V. GOPALSAMY: Never before has this happened. Never before. It is a flagrant violation of propriety.



**MR. DEPUTY CHAIRMAN:** Your time is over. Any reference to the Speaker of the Legislature has to be deleted from the records of the House. Please conclude within one minute's time.

**SHRI V. GOPALSAMY:** I did not make anything. Sir, a grave wrong has been done by the.\* Is it not parliamentary. A grave wrong has been done by a single act of the\* That is not unparliamentary? A thousand dips in the Ganga could not expiate the sin committed by a single act.

**SHRI S. W. DHABE (Maharashtra):** Mr. Deputy Chairman, Sir, I will restrict myself to a few points which have not been raised. Firstly, in Article 39(a) the provision is that there will be equality of opportunity to get justice in this country. I will like to know from the hon. Minister whether there is any equality of opportunity in getting justice in this country. The basic principle that we have incorporated in Article 39(a) is equal justice and free legal aid. How can there be equal justice? The Court is sitting at one place. How can you administer justice in the entire country by sitting at Delhi?

Secondly, there is a provision to provide for free legal aid by a suitable legislation or a scheme or in any other way in order to ensure that the opportunities for securing justice are not denied to any citizen for economic reasons or other disabilities. Even though ten years have passed and many assurances have been given in this House, the Government has failed to bring a legislation for free legal aid. I would like to know from the Law Minister what is the difficulty about it. They are so much lauding the praising the scheme of Lok Adalats. Every citizen has a fundamental right in the Directive Principles that free legal aid must be given to him. Then why should a citizen not have it available to him in all parts of the country? There are Lok Adalats in all places.

\*Expunged as ordered by the Chair.

The next point is about the Benches in different places. You will appreciate that our legal system has failed to provide justice for the common man and poor people. The fees charged by the Supreme Court lawyers are fabulous. For even administrative matters, the fee is Rs. 5500 per day. The Supreme Court is a place where the common man cannot even enter. Article 130 has been embodied in the Constitution. Entry 77 gives power to the Parliament to organise the structure of the Supreme Court. It includes the setting up of Benches at different places. Entry No. 77 is very clear. Powers have been given to the Parliament. Constitution, organisation and powers of the Supreme Court are so wide that it does not depend upon the will of the Chief Justice to constitute Benches in different parts of the country. The Bench at Aurangabad was formed by the Maharashtra Government and not by the Chief Justice and it was upheld by the judgment of the Supreme Court that they have powers. Similar is the position so far as the Supreme Court is concerned. So many proposals are pending with the Chief Justice for the last four or five years. The one is about the Supreme Court Bench at Calcutta. The other one is from Nagpur. The third is from Hyderabad and the fourth is from Bangalore. Four or five proposals are pending. We initiated the Nagpur proposal because it is a central place. The Bangalore proposal came in first. Since Bangalore and Hyderabad are in the hands of the opposition political parties, both the proposals about Bangalore and Hyderabad have been kept in cold storage. The Chief Justice has got veto to decide about the administration of justice. I do not think Article 130 or Entry 77 mean it. It is a question of decentralisation of judiciary. It is a principle and the Government must take a stand on it. The Benches could be formed at Nagpur, Aurangabad and Goa.

**SHRI P. BABUL REDDY (Andhra Pradesh):** Unless the Constitution is amended, the Chief Justice alone has got the power. So, you have to amend the Constitution.

SHRI S. W. DHABE: I do not agree with the view of Mr. Babul Reddy. But if this is the position, then the Constitution should be amended.

THE MINISTER OF LAW AND JUSTICE (SHRI ASOKE KUMAR SEN): Mr. Babul Reddy is right.

SHRI S. W. DHABE: Then the Constitution should be amended. Why should the Government take such a long time to amend the Constitution or give justice to the poor people? Lok Adalats have been much admired. One lakh cases have been disposed of. I had the occasion to see one Lok Adalat where only cases relating to Motor Vehicles Act were put in, the Insurance Companies had to pay and the cheques were ready. For complicated matters and land disputes between landlords and tenants and landlords and landlords, the cases cannot be disposed of by the Lok Adalats because they do not have the machinery. Nor can they give any decision or judgement in such matters? Only in cases where one party is the Government, the Lok Adalats have succeeded to a large extent. The Estimates Committee of the Lok Sabha, in its 31st Report, has recommended that if it is not possible to have Benches at present, why not have Circuit Courts? There were circuit benches in Kashmir and Hyderabad in the earlier days. Why should not the Supreme Court Circuit Benches be allowed to sit in different parts of the country? There was a proposal at one time that they may sit in the seats of High Courts or High Court Benches and one of the Judges of the High Court might also be recruited for that purpose.

Sir, my friend has raised a very important question. That is about the criminal cases, civil cases and the labour tribunals. The law is more or less settled in this. In the criminal law or the labour tribunals, what is required is a machinery for quick disposal. Therefore, I appeal to the hon. Law Minister who is very keen to have reforms in the judiciary not to have again a committee appointed. I was surprised to find that you have appointed the Law Reforms Commission. It

will take another five years to give its recommendations. Recommendations are wellknown. What we are lacking is action and what action should be taken is important.

Lastly, Sir, the Estimates Committee in its Thirty-First Report has recommended that there must be a machinery, a proper monitoring cell. One of the recommendations of the Estimates Committee is to have a proper monitoring cell with adequate manpower headed by a senior officer in the Ministry to pursue with the State Governments and High Courts the progress of implementation of the recommendations contained in the various reports on arrears in Superior Appellate courts, analyse the feedback, and identify the problems and bottlenecks and take effective steps promptly to correct the deficiencies if any. And if the present trend of accumulation of arrears is not arrested, the situation will go out of control and shake the very root of the rule of law and the survival depends on the speedy dispensation of justice. May I know from the hon. Minister the basis on which he has increased the strength to 25? Has any study been made? How many years will it take to dispose of the 1,20,000 cases in the Supreme Court and 13 lakh cases in various High Courts? Apart from the High Court, I would like to know from the hon. Minister whether any study has been made in his Ministry or any Cell has been set up which will tell us that so many years will be required to dispose of these cases so that the institution of cases and disposal of cases have some rationale. It is said that the criminal matters should be disposed of in one year and the civil matters should be disposed of in two years. May I know from the hon. Minister whether any yardstick has been applied in increasing the number of Judges from 17 to 25? Thank you, Sir.

MR. DEPUTY CHAIRMAN: Now the Minister reply to the debate.

SHRI ASOKE KUMAR SEN: Mr. Deputy Chairman, Sir, I am very obliged.

for the light thrown on this matter from different sections of the House. One thing is very clear that we are all agreed that this House and the Parliament would not be unwilling to grant the necessary number of Judges for every court in order to achieve the objective of Article 39A of the Constitution. I think, the giving of justice is the minimum duty of any civilised State like the giving of the means to live, to survive, to exist in freedom and dignity. These are the minimum services which a civilized State must render and much more so far a democratic State like ours where we pride in a system of law which is dispensed by independent courts freely, independently and fearlessly so that Governments may change but the laws will never change and the administration of law will remain for ever to be guided by the same standards of independence and fearlessness and equality.

Now, so far as the Supreme Court is concerned, all the hon. Members have expressed their faith in the Supreme Court. The Constitution-makers set up a Supreme Court with vast powers—appellate, original and advisory—in all matters of criminal and civil disputes as also appeals from all tribunals, and the tribunals include ordinary administrative tribunals like the Mining Tribunal. Therefore, unlike other countries where the jurisdiction of the Supreme Court is of a very limited character, our Constitution-makers gave a very large field for the Supreme Court. Of course, over the years, the Supreme Court brought self-restraint on itself so that it does not accept any cases where it thinks it is necessary to do so in the interests of justice. The jurisdiction which was originally conferred, for instance article 136, that gives power to the Supreme Court, to admit any appeal civil or criminal from any court, civil or criminal or from any tribunal, if it thinks it fit for the purpose of deciding an important point of law of public importance. But, nevertheless, the Supreme Court has been very very strict in admitting petitions under article 136 and unless they think that the interests of justice require interference they normally do not admit a civil appeal or a criminal appeal, much less a criminal

appeal particularly when there have been congruent findings of fact and also where the legal principles are fairly well-settled by the Supreme Court itself. Therefore the Supreme Court itself has worked under self-restraint and it has exercised its wide jurisdiction in a rather restricted sense. It is true that in some cases the Supreme Court has overdone it.

**SHRI SANKAR PRASAD MITRA** (West Bengal): Do you think that by allowing a special leave petition from an interlocutory order made by a single Judge in a High Court, where the petitioner has by passed the division bench of the appellate court, the Supreme Court is exercising self restraint.

**SHRI ASOKE KUMAR SEN**: No, it is not. As far as I know, the Supreme Court is very very chary in allowing appeals against interlocutory orders even if it is from a single bench. They do not do so. And where they have done so, I do not think it is proper unless I can see the facts where possibly the Judges must have thought that the interests of justice have been very badly affected.

**SHRI SANKAR PRASAD MITRA**: As one of the most distinguished lawyers in this country, you must be aware of the judgments in the House of Lords cases reported in 85(2) All Eng. Law Reports, p. 97 at page 100 by Lord Ruskin, the principles laid down for the admission of appeals. Do you think that the Supreme Court is following those principles?

**SHRI ASOKE KUMAR SEN**: In England the House of Lords never allows an appeal on interlocutory orders, never. Even the Court of Appeal very rarely allows an appeal on interlocutory orders in England. But it is true that in many cases the Supreme Court has allowed appeals against interlocutory orders and has reversed such orders. I have known it. (*Interruptions*).

**SHRI P. BABUL REDDY:** Where justice is hijacked, the Supreme Court must be allowed to interfere.

**SHRI ASOKE KUMAR SEN:** I do not want to pre-empt the authority of the Supreme Court to correct a travesty of justice where even in an interlocutory order the cry for justice is so loud that it cannot but be heeded. I think the Supreme Court should not normally allow an appeal against the interlocutory order.

**SHRI P. BABUL REDDY:** What about staying sections in Bengal in interlocutory orders?

**SHRI ASOKE KUMAR SEN:** They do not stay. Now the High Court had. The Supreme Court bypassed the Division Bench. Let us not go into that. The High Court had good reasons to do it. Let us not go into it. And it is not always that the Supreme Court does the right thing. I have seen in many cases where the right thing has not been done. And that is true in the human institutions. Failings are common and unavoidable in human institutions, particularly when the judges work under the supreme necessity of expedition. I have seen where the Supreme Court had admitted appeals against a full-bench judgement of the Punjab High Court on a question of law arising from the Punjab Rent Control Act and a later decision following the same full bench decision, came to a particular conclusion and an appeal against it was not admitted though it was pointed out specifically. And I happened to be the Counsel myself. I said to a bench of three judges that another bench has admitted an appeal on this very point and the full bench judgment on which the later judgement has been rendered and which was appealed against, decided on the ground that the full bench had decided the point.

**SHRI SANKAR PRASAD MITRA:** You are contradicting your eloquent support to Supreme Court's self-restraint.

**SHRI ASOKE KUMAR SEN:** Self-restraint still remains. This is a case of self-restraint, but on the wrong side possibly. I remember I told the judges that this is not correct that one bench should decide in one way and the other bench should not. This leads to uncertainty in the field of law, and I said, one feels that he is in the wrong court. But that is a different matter. As I said, failings are common in all human institutions.

**SHRI P. BABUL REDDY:** He went on giving stay for six years.

**SHRI ASOKE KUMAR SEN:** I hope he followed the law. I hope the subsequent benches will correct him, and this is the duty of subsequent judges to correct the erring judge, as one Lord Chancellor said, I must remind the House that when an English judge—a white judge—while convicting two black youths aged 18 and 20 for raping a white girl—and in a case where it was not merely a rape but the two erring youths had, after the rape, urinated on the body of the two victims—released them on parole, it roused such a great passion in England and such a fury that about 86 members of Parliament wrote to the Lord Chancellor saying 'You must dismiss this judge. What a judge is this. He is not fit to occupy the chair of a judge' and invoked an old doubtful jurisdiction of Lord Chancellor to dismiss an unwanted judge. Lord Elwin Johns had been the Lord Chancellor then. He kept quiet for some time. There were hundreds of letters appearing in the papers and demand of 86 members of Parliament including six members of Labour Party which was then in power. And in Lord Mayor's luncheon in honour of Lord Chancellor given the same year, replying to the toast of Lord Mayor, the Lord Chancellor, Elwin Johns said: Mr. Lord Mayor, I shall be failing in my duty if I do not refer to a matter which has roused in recent times public passion, to fever heat I mean. The white judge while convicting the two youths released them on parole saying as follows: After all youth is youth and they can still be corrected. Therefore, they were released on parole with a direction to Social Service department to correct them. Whether they have

been corrected or not, I am not quite sure. But this is what he did. This arose out of passion. Unfortunately, racial prejudice got mixed up. It was a very bad case where two young men not only raped two white girls, aged about sixteen and seventeen, young girls, but urinated on the body, after the awful sexual act. Now, Lord Jones said 'I shall be failing in my duty if I do not refer to this incident; I have been asked by eminent as well as ordinary persons, no doubt motivated by the best of motives, including a large number of Members of Parliament, to dismiss this white judge; so long as I remain the Lord Chancellor, no judge shall be dismissed who is doing a thing according to his conscience'. He said, the only way to correct an erring judge in this country, according to all laws, is to test his judgement in the court of appeal or by a writ of error. This is the only way to correct an erring judge or by changing the law. If he has decided the law incorrectly,—as has been done by the Supreme Court many times, where it has struck down many laws, tax laws, acquisition law—the law in regard to bank nationalisation was struck down by the Supreme Court but we passed a different law later—and various other laws,—we can test his judgement in a higher court. This is the tradition of democracy. We do not correct them by debates in Parliament or outside, but we correct them by testing their judgement in a higher court or by a writ of error, which is available in English, not very much tested in this country. Writ of error has never been tested here. Therefore, let us remember this point that while we talk about judges, as many have done, we should not refer to them in such a manner that in the process, dignity of our courts suffers. We know that many judges fail in their duty to reach a correct conclusion, as all human beings are liable to commit errors. The only way is the democratic way. The path of justice is not dictation to judges, but the path of justice is correcting them by known methods of law.

Sir, by and large, the Supreme Court has established a tradition which is worth a democratic country and which, certain-

ly, has evoked admiration not merely from this country, but also from outside; particularly, the Supreme Court's decisions, in recent times, on public interest litigations, on the stretching of the arms of the Court in alleviating injustice, where the known methods and instruments of law were found to be insufficient. But I must say that it is always not possible for everybody to go to the Supreme Court. Many of the things which the Supreme Court has laid down may possibly, in the future, find place in the Civil Procedure Code, so that the ordinary courts may also stretch their arms in a similar way, which the Supreme Court is now doing, today. Nevertheless, things may also tend to get overdone. For instance, many of the very beneficent programmes of public benefit have been held up by unnecessary interference from the courts. The other day, the Prime Minister, while opening the conference of Chief Justices, Chief Ministers and Law Ministers, referred to a case where a dam, a project for building a dam, was held up for years and, after sometime, the dam burst or the bund burst resulting in tremendous loss to the people. Therefore, while a spirit of passion is understandable for the poor, the needy and the oppressed, we must not allow our passion to overrun reason or public interest. For instance, let us take the case of many of the railway projects which have been held up because there are trespassers living on the land which is to be acquired and even after acquisition the railway authorities cannot get it. The result is that so much of daily inconvenience is caused to millions of people. Therefore, there must be striking of balance. You have to try law as an instrument of mercy, compassion and redress for justice and at the same time making it compatible with the demands of public interest. It is the public interest particularly in a democracy which must overweigh every other interest in the last analysis.

I am saying all these things because naturally when the Supreme Court comes into the picture, people's ideas about justice, the deficiencies and various other matters come into the forefront and we are right in giving expression to those

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grievances. Now, let us deal with some of the points which have been raised. The first is that increasing the number of Judges alone will not solve the problem, we cannot agree more on that point. It is absolutely correct that we cannot solve the problem of speedy justice by merely increasing the number of Judges. It is very clear, we can increase the number by thousands by paying one rupee a day, putting the people who never know what is justice, who never know what law is and thousands of cases we will be able to dispose of within no time, but that is no justice. That is what was called in olden days the 'kazi justice' where a man's guilt was decided by putting his hands into a boiling pan so that if his hands were not burnt then he would not be guilty and if his hands were burnt he would be guilty. Well these are the methods which were tried in medieval ages. Therefore, it is absolutely agreed that we cannot solve this problem by merely increasing the number of Judges. We must get the right Judges, because the need for justice is not mere expedition but justice as it is in all its qualities. Therefore, to get qualitative justice we must appoint good Judges and again the problem of appointing good Judges brings in the question of their remuneration, their emoluments, the inducement to allow people to leave their ordinary vocations and to come to the pench to take up this very important duty of judicial work. Now, very soon we will be having Bills before you which will provide for increasing the salaries of Judges and their emoluments in many ways and the amendment or the Constitution for that purpose. I hope to introduce these Bills during this session of Parliament. It is expected that these emoluments will attract better talents. It is not an excessive statement to make when we see that today the salaries of Judges are such that even the fourth grade or fifth grade of lawyers would not accept judgeship and those who accept judgeship, having left good lucrative practice at the bar, would regret continuance on the bench. It is true that the rupee has suffered in value tremendously from 1950. This is 36 years

back when Second Schedule fixed the salary of Rs. 3,500 per month. It was then thought that it would be a safeguard for the Judges, that it would ensure continuance of a salary and an erring parliament would not normally be entitled to reduce that salary. But what was considered to be a guarantee has now become a halter in the neck of the Judges and many of them are chafing under it. Therefore, we must make it consistent with the rising prices. Make it realistic and make it competitive with other vocations. As I said the other day, under the industrial awards in Bombay and Calcutta, a liftman of the LIC starts at Rs. 1,400 a month, a driver in a multi-national corporation in Bombay gets over Rs. 2,000 a month. Now who will be there to become a magistrate at Rs. 800 a month.

SHRI S. W. DHABE: A clerk gets Rs. 2,700.

SHRI ASOKE KUMAR SEN: Yes, some time a class III employee of the LIC was getting more than his officer.

DR. R. K. PODDAR (West Bengal): A university teacher starts at Rs. 700.

SHRI ASOKE KUMAR SEN: Now it is more with dearness allowance that they get.

SHRI NIRMAL CHATTERJEE: He starts at Rs. 700.

SHRI ASOKE KUMAR SEN: But what about the dearness allowance? Dearness allowance must be there.

SHRI SATYA PRAKASH MALAVIYA (Uttar Pradesh): It comes to Rs. 1,500 as starting pay.

SHRI ASOKE KUMAR SEN: May be. I am not here to equalise, I am not here there is a rush, he gets left out and the accused or the *chaprasi* who is also wait—other sectors of employment. But to make along with him in the queue gets a Ministry. Our Ministry is to look after in a queue and when the bus comes and the judicial part of our Government and there we must make the salaries and emolument more respectable, more competitive and more realistic. Take this very grim picture. In Delhi alone, some magistrates and judges have told me that they have to wait. We have not given them

quarters near their courts. They have to travel long distances. In olden days, the Britishers used to give quarters for their magistrates, for their judges very near their courts. Now a man who has to travel from Hauz Khas to Tis Hazari courts has to wait near the bus stand sometimes for nearly half an hour or 40 minutes in a queue and when the bus comes and there is a push, he gets left out and the accused or the *chaprasi* who is also waiting along with him in the queue gets a berth earlier than him in the bus and goes ahead of him. Sometimes they get into the bus along with him and he will have to stand in the bus with them, jostling with them. I am not saying to stand in the same queue. But if we have to have a dignified judiciary, we cannot have that. We must see that their convenience is looked after, their requirement about residential accommodation is looked after, their houses are very near their courts and various other things have to be looked after. At least for the Supreme Court, I must say that they are giving good houses. And under the new Bill that we shall be introducing, their furniture will be the same as that of Cabinet Ministers. But as I said, the concern expressed by Members in this House that the number alone will not solve the problem is correct. And we are trying to improve the quality of Judges and also to improve the training of law in the universities. Let us be very clear that compared to other countries in the West—England and America, with which our system is more akin—the training in the universities and the standard of education of law leave much to be desired. Note books are still the best instrument for passing an examination. There is no original thinking and most of the teachers are such as would not keep in touch with the modern trends in law or with the latest position either in the Supreme Court or the other courts, or would be responsible for any original work in the field of law. Take the Harvard Law Journal, the Yearly Law Journal, The Cambridge Law Review, the Modern Law Review and various other law journals of the West. You will see how even students are engaged in original thinking and research, and

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how much of it will be found in our universities. If our teachers are paid well, as they must be, and they must be of quality, then they must also produce good work and not stay away when they pass their examinations. Like many of our doctors and scientists who come from the West, they don't read anything more than what they have read already at the time they have left either England or America, and after engaging in heavy practice they forget that there are more things to learn every day. And the world is progressing so fast in the field of science and technology, medicine and various other branches of learning. Therefore, it is not merely improving the quality of the Judges when they are appointed but also improving the very standard of education of law and introducing the spirit of thinking, analysis and original work into our universities. There I think a good deal has yet to be done and I hope Parliament in the years to come would give its guidance and emphasize this problem very very strongly. I feel it very much because I was a teacher myself at one time and I remember how much we used to take pride in building up students and making our teaching more effective and more instructive. But I must say that that spirit, possibly, is waning every day and the colleges have become hotbeds of politics and factions and various other vices.

SHRI NIRMAL CHATTERJEE: What about... (Interruption) ..

SHRI ASOKE KUMAR SEN: Coming from West Bengal you have to ask somebody else. A University which gave to India some of the best scholars and Nobel prize winners like Sir C. V. Raman, today cannot hold examinations.

AN HON. MEMBER: Thanks of them!

SHRI ASOKE KUMAR SEN: I am not blaming anyone.

SHRI NIRMAL CHATTERJEE: In 1978-79 nothing could be done.

SHRI ASOKE KUMAR SEN: My heart bleeds because I am a student of that University. I remember the old teachers—what dedicated teachers they were—people who lived, some of them, almost like sanyasis, like Sir P. C. Ray

who built up generations of scientists; Sir Jagdish Bose, F.R.S. How many FRSS have the science colleges produced? Now there are no examinations there. When I go there I find nothing but posters of different political parties and organizations and students learn only slogans. The teachings of Swamiji, teachings of Gandhiji, teachings of our great servants are not attended to any more.

**SHRI SANKAR PRASAD MITRA:**

That has happened in spite of increase in salaries.

**SHRI ASOKE KUMAR SEN:** That has happened in spite of increase of remuneration and everything. Therefore, this has to be attended to because, after all, the future generations have to be taken care of and by just slogan-shouting no nation can reach that standard of excellence which we expect India to reach and which India had reached in all the centuries of its past civilization.

**SHRI NIRMAL CHATTERJEE:** Nor by excluding slogans completely.

**SHRI ASOKE KUMAR SEN:** Not in the universities. I have seen the university unions in the West. Even in Paris you will find there are very few posters in the Sorbonne. Paris has the most vociferous student organization and I happened to study there for some time. But you will not find it there. I think we should all be concerned about it irrespective of parties. Our young minds must be trained to produce another Gandhiji, another Jawaharlal Nehru, another Tilak, another Aurobindo, another Subhash Bose, Netaji.

**SHRI NIRMAL CHATTERJEE:** I am glad you mentioned it.

**SHRI ASOKE KUMAR SEN:** I am very glad that you appreciate us. When Swamiji took his dip at the tip of India at Kanyakumari I take my dip there. The first time I went there I was a much younger man, his revelation; he got his inspiration there. That is why, whenever I go to Kanyakumari I take my dip there. The first time I went there, I was a much younger man.

**SHRI M. S. GURUPADASWAMY** (Karnataka): Did you get in spite?

**SHRI ASOKE KUMAR SEN:** Yes of course. Everybody does if he is an Indian.

He will see the end of India, three oceans meeting and the majesty of India in its full glory as the sun sets or the sun rises. Therefore, he got the revelation that the whole world lay at his feet for the treasures of India to be unburdened and to be preached. You will remember that he took the vow then and he went to America first, then to Europe and everywhere else and preached what the treasures of India had been over the centuries. And the whole world was astounded because after all India, to them, was a land of snakes, snake charmers and fakirs. They never knew that this is the land where such profound thought had been forged in the past and which had very little parallel in history. Therefore, let us not forget because after all this land is not a jungle. This land is a land with five thousand years of ancient civilisation, with great treasures of the past. Let us, therefore, not forget our past moorings. Let us build something which is equal to the past, if not better. That cannot be done, as I again say, by merely shouting slogans. I am not saying that slogans have not to be shouted. Slogans have to be shouted against injustice. We had ourselves done so during the British days, slogans were shouted but for a cause, for something which is eternal. Therefore, Sir, I support the demand that we must explore all the other avenues by which we can improve our judiciary along with the rest of the country's base which supports a good judicial system.

Now the next demand is about location of the Supreme Court. It is a very old demand. For a country like ours, it is certainly an understandable demand. But let us not forget that we are only about one-third of the United States in size.

**SHRI S. W. DHABE:** Population?

**SHRI ASOKE KUMAR SEN:** In population very much more. In population the Chinese and we beat the world. But the Chinese are behind us now, I think. But it is not merely the size which dictates a particular position. This has been gone into by different expert bodies. The Supreme Court itself has gone into it. After taking into account everything their verdict has been against disintegration of the Supreme Court. There are



several political factors to be taken into account. Where will you locate it? We are having this difficulty with regard to Uttar Pradesh. You have seen all the fastings, you have seen all the strikes going on in Allahabad, Allahabad once noticed integration. Now the western districts of U. P. want a Bench there. Again where should we locate it?

**SHRI D. B. CHANDRA GOWDA** (Karnataka): South's is a genuine demand.

**SHRI ASOKE KUMAR SEN**: I am not castigating any demand as being not genuine.

**SHRI V. GOPALSAMY**: This is because you mentioned about Kanyakumari.

**SHRI ASOKE KUMAR SEN**: Rameshwaram will remain there for ever. Thousands of pilgrims go to Rameshwaram from the North more than those from the South. Let us not forget about it because that is the story of India. If you go to Rameshwaram, you will find thousands tread every year from the North, much more from the North than from the South. I remember this. Notwithstanding the fact that there are those who think that the South and the North are culturally different, I will give you a very wonderful example of what inspired me as an Indian. Years ago, when Religious Endowments was under the charge of the Law Ministry, I had the occasion to go to the South, as I always do, because all the great temples are still there intact. In one place—I forgot it now, it was either at the border of Andhra Pradesh or somewhere else I should have put it in my diary, but I remember there is a temple possibly built in the Vijayanagar Kingdom—that temple was built by a small Zamindar, called Rajaji in those days, a small chieftain. There is a copper-graph which unfortunately happened to be in Sanskrit. In those days Sanskrit was not anathemised in the South. It is still the language of prayers. I happened to understand the Sanskrit, I read the copper graph. It is very great. That Raja says in Samakrit while dedicating all the land for the maintenance of the temple: "Every year I found thousands of my brothers coming

from the North trekking to Rameshwaram and Kanyakumari on foot with their wives, children and relations. Thousands died on the way, many fell sick; and thousands cannot be tended. There is no aid for them. So, I owe this duty to my creator and to my forefathers to give this land so that the income arising therefrom will be utilised for looking after these poor pilgrims from the North." Is there a better proof of unity between the South and the North?

**SHRI V. GOPALSAMY**: That shows the hospitality of the South.

**SHRI ASOKE KUMAR SEN**: I am very obliged.

**SHRI GHULAM RASOOL MATTO** (Jammu and Kashmir): That shows the integrity of the country.

**SHRI ASOKE KUMAR SEN**: There is something more, which the hon. Member has missed. It is essentially the unity of the Indian civilisation and culture which can never be destroyed. And the death of Indira Gandhi has proved it once more. India has been knit to the same golden thread from Kanyakumari to Kashmir. That is not merely an accident that the Great Shankracharya built his temples more in the North than in the South.

**SHRI V. GOPALSAMY**: Has it not been provided by the British rule in India?

**SHRI ASOKE KUMAR SEN**: We don't agree. The history of India is a proof. British claimed it. We do not concede that claim. I am saying as an Indian. We are talking as Indians and not as anybody else. The great Shankaracharya did not go by accident during the British days to build his temples in Rishikesh and in Amarnath. Namboodri Brahmin is still the high priest in Rishikesh and in Amarnath.

**SHRI GHULAM RASOOL MATTO**: And the Buddhist era integrated India 2000 years before Christ.

**SHRI ASOKE KUMAR SEN**: Yes. And it was not a mere accident that even after the Muslims came, the Muslim Choultry and Muslim Charity looked after the Hindus and the Muslims equally. This is what India is. We have never been sectarian in that sense. Now, those who come from Kerala know it is a country of diverse religions. How many Muslim

mosques have been built and lands given by the Hindu Rajas free? Many. If you go to the Synagogue in Cochin, which I have done, you will find that it is beside the Shiva Mandir of the Maharaja of Cochin. The great Raja during whose time the unfortunate Jews came from Spain being driven by Inquisition. You remember the Inquisition days in Spain. They were all driven out and many were killed. They came and landed on the hospitable shores of Kerala. In Cochin the Maharaja gave them land free and it is still rent-free.

SHRI D. B. CHANDRA GOWDA: Let us extend this hospitality of Supreme Court now. *(Interruptions)*.

SHRI ASOKE KUMAR SEN: I don't grudge the South becoming more hospitable than ourselves. After all, South is a part of India.

SHRI V. GOPALSAMY: Very often they complain about our hospitality.

MR. DEPUTY CHAIRMAN: Mr. Gopalsamy, please don't interrupt the Minister when he is replying.

SHRI ASOKE KUMAR SEN: I shall never grudge the greater hospitality of the South and that shows why I don't grudge...

SHRI D. B. CHANDRA GOWDA: Now he wants Supreme Court hospitality. That is the point *(Interruptions)*.

SHRI ASOKE KUMAR SEN: That is not the hospitality.

Now, Sir, coming back to the Supreme Court *(Interruptions)* where it is to be located? Is it to be located at Hyderabad or Bangalore or Cochin or Madras?

SHRI P. BABUL REDDY: We will sit together and agree. Are you prepared to give it to us?

SHRI NIRMAL CHATTERJEE: First let us agree it can be more than one. Then we can decide what is the number and where these can be located.

SHRI ASOKE KUMAR SEN: Then locate the Parliament at all the places. Let us start with the Parliament. Will it be possible?

MR. DEPUTY CHAIRMAN: I request the hon. Members not to interrupt the Minister while he is replying.

SHRI ASOKE KUMAR SEN: Sir, only the other day I was reading a very interesting article on 'Mohanjodaro and Harappa'. The author of this article was an American. He writes that 90 per cent of the Hinduism that exists today was derived from the Dravidians and not from the Aryans.

SHRI R. MOHANARANGAM: It is a fact.

SHRI V. GOPALSAMY: You explain it.

SHRI ASOKE KUMAR SEN: Why are you shouting about the Dravidians? *(Interruptions)*. Why are you shouting? The Aryans came later. *(Interruptions)* If the Aryans had accepted 90 per cent of the Dravidian culture, why do you grudge? I should be very proud of it. *(Interruptions)*

MR. DEPUTY CHAIRMAN: Mr. Gopalsamy, please don't interrupt.

SHRI ASOKE KUMAR SEN: I will tell you, Sir, today we had a civil war between Mr. Mohanarangam and Mr. Gopalsamy about the Tamil Nadu lapses, Tamil Nadu legislation and Tamil Nadu Speaker. *(Interruptions)*

SHRI R. MOHANARANGAM: It is a civil war of common past.

SHRI ASOKE KUMAR SEN: Now, Sir, when I was listening to these two great stalwarts from the South banking at each other, I knew that this is not a malice only in the North alone, but it is also in the South.

Now, Sir, let us come to the Supreme Court. *(Interruptions)*. The Supreme Court consisting of Judges from the South and at a time when the Chief Justice happened to be a Maharashtrian, decided as

a full court meeting that it would not be in the interest of the Supreme Court or for the judicial integrity of India to disintegrate the seat of the Supreme Court in different parts.

Only the other day, a demand was made from the North-Eastern region for locating a branch of the Supreme Court in the North-Eastern India, because that is considered to be a less advanced area, people are backward and various other things also. I can see that for them to travel all over to the Supreme Court may not be possible. As I have said earlier, why is the distance put against the Supreme Court being located in Delhi, supposing it was in Hyderabad or in Nagpur, how much less time would be taken for a man coming from Cochin or Kanyakumari or a man coming from Nagaland? Not much. Now the reason is that it is not appreciated that in the Supreme Court if they file an appeal and the litigant has not come there, has only to engage a lawyer and all the documents are printed in paper book.

**SHRI P. BABUL REDDY:** He has to come to pay lawyer's fee

**SHRI ASOKE KUMAR SEN:** He can pay even by money order.

**SHRI V. GOPALSAMY:** He has to bargain himself.

**SHRI ASOKE KUMAR SEN:** If a man is to come from Scotland to fight a case in the House of Lords in England he does not come himself. It is not an original trial that you are thinking of and that the litigant must be personally present. He must give instructions because the arguments will be on paper book and what is not mentioned in the paper book will not be heard at all. It will not be allowed to be heard.

4.00 P.M.

**SHRI P. BABUL REDDY:** But clients have to come to the Supreme Court.

**SHRI ASOKE KUMAR SEN:** I have seen hundreds of cases where clients do

not come to the Supreme Court. Instead, they ask some Advocate to look after their cases.

**MR. DEPUTY CHAIRMAN:** Please do not have interruptions.

**SHRI V. GOPALSAMY:** It is a very lively speech. We are enjoying it.

**SHRI ASOKE KUMAR SEN:** Now, Sir, this is the point that the Supreme Court and the Law Commission both have said that it will not be in the interest of the Supreme Court to disintegrate it. I do not think it will be possible for the Government to over-rule that advice. Now, so far as increase in the age of Supreme Court judges is concerned, the matter is under consideration alongwith the judges of the High Court. Now, the hon'ble Members have referred to the extravagant fees being charged by the Supreme Court Counsel but here those who pay the extravagant fees are equally to be blamed. But we have now a Legal Aid Cell of the Supreme Court. It is functioning very well—and our Ministry has been liberally subsidising this Legal Aid Cell. If there is any deficiency, I shall be very glad if that is pointed out because I am personally very concerned in the Legal Aid Cell everywhere and we are sanctioning

over the country—from Nagaland right upto Kashmir. But somebody has said, we have not yet passed a law. That is true. We have left the scheme of the law to be devised by the Chief Justice Shri Bhagwati who is incharge of the entire legal cell and he has been promising to give me a draft, and if we are thinking of the poor people then we must think of the Legal Aid Cell as coming to the aid of the poor people. I am all at one with those hon'ble Members who feel that this is a very bad thing. Such a fee should never be charged. There must be some standard of fee for the top layer, then second layer, then third layer and then fourth layer. Once you fix up a fee, it is almost against the ethics of Bar. Mr. Babul Reddy will bear me out that if a client comes and say: I cannot pay the fee that you are charging, I will say.

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there is no question of reducing the fee. Do not ask me to reduce the fee in the appropriate cases because then it makes it an uncertain fee and that is the proper ethics also in England you will find.

SHRI NIRMAL CHATTERJEE: Sir, I am missing your speech since I have to go to attend a Committee Meeting.

SHRI ASOKE KUMAR SEN: The loss will be ours. Now, I remember Mr. Murlidhar Bhandare gave this example of our having pouch on the back of our gown and I think, he was talking of the 16th century because in the 17th century, barristers are charging good fee. Whatever clients threw was considered acceptable only in the 16th century. I hope, Mr. Bhandare himself together with others would present to his advice and follow that noble example. Mr. Baharul Islam gave the number of cases which are in arrears, the large number increasing every year. His point was that by increasing the number of judges alone, you will not solve the problem. Well, he was himself sitting on the Bench and I had the good fortune of arguing before him. A fine gentleman he was on the Bench, but he was one of those who would not ride roughshod over anyone. He was very gentle unlike Justice J. C. Shah who used to cut short every argument. He would allow advocates to have their long run, and that always contributed to arrears.

SHRI R. MOHANARANGAM: Just like our Deputy Chairman.

SHRI ASOKE KUMAR SEN: He is very firm occasionally. Now it is true that there are judges and judges. I remember Justice J. C. Shah used to dispose of eight income-tax appeals in a day. And even important appeals involving facts, very big appeals, he would dispose of in less than a day. Now there are judges who take possibly ten times the time that Justice Shah used to take. Who is better, one does not know. But a *via media* is better. Cutting the arguments short without listening fully is not always the best method. Nor is it good to allow all sorts of nonsensical arguments to be carried on for hours and hours. So there must be

a proper balance. We must find out a procedure which will cut short the arguments. I think the time is coming when we shall insist upon written arguments being put in every court of appeal. In England this is done. In our Supreme Court it is almost done, though not officially. Almost all of us in recent times have been putting written arguments, so that it will really facilitate quick disposal of cases.

There was a demand for accommodation for the judges of the High Courts and subordinate courts. The Supreme Court judges at least do not suffer from lack of accommodation. In fact, their houses are sometimes much better than the houses of Cabinet Ministers.

Mr. Mitra rightly said that number alone would not count and that we must improve the quality of the judges, their emoluments and so on. Now somebody said that 50 judges should be there. Well, you could have 500 judges. But you must get judges of quality. At least some people think that increase in the number of judges would possibly depreciate the quality of the Supreme Court. Many have told me...

SHRI SANKAR PRASAD MITRA: Quality includes integrity.

SHRI ASOKE KUMAR SEN: Yes, both. Somebody said: how is it that we have fixed the increase in the number of judges as eight? Well, that is the number which the Supreme Court itself gave, and we are accepting that. Left to myself, Government will be willing to accept even 30 judges because possibly that would have increased the efficiency and the speed of the disposal. And if after a number of years, we found that that was too many, we might have reduced it. But increasing the number to 30 does not mean necessarily that we must appoint 30 (Interruptions)

SHRI JAGESH DESAI (Maharashtra): Let us stop these interruptions. Otherwise what is the point?

**SHRI ASOKE KUMAR SEN:** I said, the Government might have been prepared to accept 30. But the Supreme Court itself...

**SHRI V. GOPALSAMY:** The Minister is yielding. Why do you bother Mr. Desai?

**SHRI ASOKE KUMAR SEN:** Not being an advocate, he does not know that we are used to interruptions.

We have accepted the figure of 26. I hope that with 26, we shall be able to grapple with the problem. If we need more, we shall have to think about it later.

Once more I thank all the hon. Members who have contributed to the debate

**SHRI S. W. DHABE:** What about legal aid legislation?

**SHRI ASOKE KUMAR SEN:** I have said that we are liberally subsidising...

**SHRI S. W. DHABE:** I asked about legislation.

**SHRI ASOKE KUMAR SEN:** I think you have not heard me. I said, we have left it to the Chief Justice of India who is also the head of the Legal Aid Cell, to give us the scheme of the Act. He has promised to give it to me. The moment he gives it to me, we shall bring it, because our legal aid scheme will be different from the English legal aid scheme. We shall introduce various things like legal education, pre-emptive measures, to prevent cases coming to court, various other things. Therefore, we shall await. Without going into the matter, very quickly let me say, it is better to leave it to Justice Bhagwati to devise the law and then we shall see.

With these words I thank once more the honourable Members for their contribution...

**SHRI B. SATYANARAYAN REDDY:** I raised one question regarding appointment of judges to the Andhra Pradesh High Court. A panel of nine names...

**SHRI ASOKE KUMAR SEN:** I should have answered that although that was not strictly relevant, with great respect to the honourable Member. Appointment to the Andhra Pradesh High Court does not come into the picture while we are discussing the Supreme Court. However, since it was raised I shall say, factually the honourable Member, I think, was not correct. May I give the facts without disclosing the secrets. (Interruptions) When the question of Karnataka comes up, we shall see. I shall require notice for such questions. Now, so far as Hyderabad is concerned, we had two names, alternative names, given by the Chief Justice—one was Mr. Kadri, the other was Mr. Sikhamani. The Chief Minister accepted Mr. Kadri's name and sent it to Delhi. The Chief Justice of India accepted Mr. Kadri's nomination but also pointed out that Mr. Sikhamani should also be considered as he belongs to a minority community. As a result, the matter has gone back to the Chief Minister to consider whether Mr. Sikhamani should also be appointed or not. Now the matter rests with the Chief Minister of Andhra Pradesh.

**SHRI B. SATYANARAYAN REDDY:** That is not the point. Out of the panel of 9, two names were deleted.

**SHRI ASOKE KUMAR SEN:** I think Mr. Sikhamani's name was mentioned. If any further details are to be asked, the honourable Member should put a separate question... (interruptions) That is outside the scope of this debate. I shall be prepared to answer you if you put a separate question. I cannot venture an answer off-hand.

**MR. DEPUTY CHAIRMAN:** The question is:

"That the Bill further to amend the Supreme Court (Number of Judges) Act, 1956, as passed by the Lok Sabha, be taken into consideration."

*The motion was adopted.*

**MR. DEPUTY CHAIRMAN:** We shall now take up the clause-by-clause consideration of the Bill.

[Mr. Deputy Chairman]

Clause 2: Amendment of section 2.

SHRI SATYA PRAKASH MALA-  
VIYA: Sir, I move:

"That at page 1, line 6, for the word  
'twenty-five', the word 'thirty-five' be  
substituted."

मान्यवर, 1950 में जब संविधान लागू  
किया गया था तब से पांचवीं बार सर्वोच्च  
न्यायालय के जजों की संख्या में वृद्धि की  
गयी है और अब यह संशोधन लाया गया  
है।

*The question was put and the motion was  
negatived.*

MR. DEPUTY CHAIRMAN: The  
question is:

"That Clause 2 stand part of the Bill."

*The question was put and the motion was  
adopted.*

Clause 2 was added to the Bill.

Clause 1: Short Title

SHRI ASOKE KUMAR SEN: Sir, I  
move:

"That at page 1, line 4, for the figure  
'1985', the figure '1986' be substituted."

*The question was put and the motion was  
adopted.*

MR. DEPUTY CHAIRMAN: The  
question is—

"That Clause 1, as amended, stand  
part of the Bill."

*The question was put and the motion was  
adopted.*

Clause 1, as amended, was added to the  
Bill.

Enacting Formula

move:

"That at page page 1, line 1, for the  
word 'Thirtysixth', the word 'Thirty-  
seventh' be substituted."

*The question was put and the motion was  
adopted.*

MR. DEPUTY CHAIRMAN: The  
question is:

"That the Enacting Formula, as  
amended, stand part of the Bill."

*The question was put and the motion was  
adopted.*

*The question was put and the motion  
was adopted.*

*The Enacting Formula, as amended,  
was added to the Bill.*

*The Title was added to the Bill.*

SHRI ASOKE KUMAR SEN: Sir, I  
beg to move:

"That the Bill, as amended, be passed."

*The question was put and the motion was  
adopted.*

#### ALLOCATION OF TIME FOR DISPO- SAL OF GOVERNMENT LEGISLA- TIVE AND OTHER BUSINESS

MR. DEPUTY CHAIRMAN: I have  
to inform Members that the Business  
Advisory Committee, at its meeting held  
on the 21st April 1986, allotted time for  
Government legislative and other business  
as follows:

KBusiness	Time allotted
1. Consideration and passing of the Khadi and Village Indus- tries Commission Amend- ment) Bill, 1985	2 hrs.
2. Discussion on the working of the following Ministries:	
(i) Ministry of Water Resour- ces	1 day.
(ii) Ministry of Labour	1 day
(iii) Ministry of Transport (ex- cluding Railways)	1 day.